IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1222 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 4 No

5 - Both the learned Judges who decided the case

HEIRS OF DECD. KESHAVLAL CHHAGANLAL PATEL

Versus

BHATT PRABHASHANKER DASHRATLAL

Appearance:

MR MC SHAH for Petitioners

MR BR PARIKH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/09/98

ORAL JUDGEMENT

This Revision Application is directed against the order dated 28.7.1998 passed by the District Judge, Nadiad whereby the learned Judge quashed and set aside the judgment and decree dated 22.10.1992 passed by the Civil Judge, (JD), Kapadvanj in R.C.S. No. 159/78 and remanded the matter to the Lower Court with a direction that it shall afford reasonable opportunity to the

defendant to lead evidence on his part. The Court also directed to allow the plaintiff to adduce further evidence if he desires so. A further direction was given that in the event of presentation of application under section 144 of the Civil Procedure Code it shall be decided first by giving it top priority and the same shall be decided within three months from the date of presentation.

2. This matter came up before this Court on 28.8.1998. On the said date, the Court has passed the following order:

"Issue Notice as to why this CRA be not admitted and allowed, returnable on 14.9.1998. Interim relief in terms of para 10(B)".

The necessary facts are that the plaintiff filed a suit for eviction and restoration for possession in the year 1978 on the ground of default in payment of rent, non-user and sub-letting and also the bonafide and personal requirement. The defendant filed written statement and contested the suit. The examination-in-chief of the plaintiff commenced on 24.7.1992 which was completed on 6.8.92. On the same day, the defendant was called upon to cross-examine the plaintiff. However, the matter was adjourned on the request of the Advocate for the defendant. 27.8.92 was fixed for cross-examination of the plaintiff by the defendant. It was again adjourned to various dates on the request of the learned Advocate for the defendant and the matter was adjourned to 4.9.92 and 15.9.92. The defendant proceeded with the cross-examination on 15.9.92, who without completing the same, prayed for adjournment and accordingly it was adjourned to 24.9.92. The defendant's Advocate did not cross-examine the plaintiff on the said date and on his request, the matter was adjourned to 3.10.1992. It was again adjourned to 8.10.92. On 17.10.92, the plaintiff and the defendants were present in the Court. The learned Advocate for the defendant pleaded no instruction by submitting the pursis. The defendant present in the Court did not express his readiness and willingness to cross-examine the plaintiff in the Court. He also did not ask for adjournment with a view to engage Counsel. He did not say anything for the production of the witnesses. In view of this, the learned Judge adjourned the matter to 22.10.92 for judgment. On 22.10.92, the Civil Judge (JD), decreed the plaintiff's suit and directed the defendant to vacate the premises and deliver the peaceful and actual possession of the suit property to the

plaintiff. The petitioner preferred appeal against the judgment and decree to the court of District Judge, Kheda at Nadiad. The learned District Judge found that the trial Judge committed error in not giving opportunity to the defendants when the learned Advocate had retired. The learned Judge also found that the arguments were not heard on behalf of the defendants by the learned Judge. The learned Judge also noticed that though the judgment was pronounced on 22.10.1992, the decree was drawn on 2.11.1992. However, before the copy of the decree was made available to the defendant, the decree was executed. On noticing these facts, the learned Judge proceeded to make observations against the trial Judge which reads as follows:

> "It transpires that the learned the then trial Judge Shri D K Patel with some ulterior motive in the mind, has passed the order of handing over the possession on execution petition. This fact after passing of judgment and decree, now supplies the backgrounds as to why the learned trial Judge did not offer any opportunity too the defendant to adduce the evidence showing that he was bent upon seeing that the plaintiff gets the possession during his tenure by hook or crook and whatever has transpired from passing the decree till the filing of this appeal is nothing but a shameful event on the part of judiciary."

3. It is contended by Mr M C Shah, learned Advocate for the petitioner that the learned trial Judge of the First Appellate Court has committed error in holding that the defendants were not given opportunity to present his case. when his Advocate on 17.10.92 pleaded no instructions. It is submitted that in view of the provisions of Order 17 Rule 3 of the Civil Procedure Code, the Court has rightly proceeded under the provisions of Order 17 Rule 3 of the CPC. He placed reliance on a decision in the case of Hariram v. Krishan Lal, reported in AIR 1964 J & K 79. On the other hand, Mr B R Parikh, learned Advocate appearing for the respondents submits that on 17.10.1992 when the defendants' Counsel pleaded no instructions, it was obligatory on the part of the trial Judge to give opportunity to the defendants to further cross-examine the plaintiffs and also to produce evidence. Mr Parikh submits that the learned Judge ought to have proceeded under the provisions of Order 18 Rule 2 of the C.P.C.

4. I have considered the rival contentions. It is to be noticed that the suit was filed as back as in the

year 1978. After 14 years, it came up for recording of the evidence of the plaintiff. The evidence of the plaintiff was complete on 6.8.92 and the defendants were called upon to cross-examine him. The case was adjourned to various dates i.e. 27.8.92, 4.9.92, 15.9.92, 3.10.92 and 8.10.92, but the defendants did not complete the cross-examination. I am really surprised that inspite of the fact that the case was adjourned to various dates just for the cross-examination of the plaintiff, still the learned Appellate Judge observed that the trial court has acted in hurry. Be that as it may, in my view, the learned trial Judge has rightly praoceeded under the provisions of Order 17 Rule 3 of the C.P.C. The Rule reads as follows:

"Where any party to a suit to whom time has been granted fails to produce hihs evidence or to granted fails to produce his evidence or to perform any other act necessary to the further progress of the suit for which time has been allowed, the Court may notwithstanding such default,

(a) If the parties are present, proceed to decide the suit forwith, or

(b) If the parties are, or any of them is, absent, proceed under rule 3."

Thus, in a case where a party is allowed time to perform an act necessary for the further progress of the suit, and if the said party defaults, and further if the parties are present, the Court may proceed to decide the suit forthwith. In the instant case, the defendants were required to cross-examine the plaintiff for the further progress of the suit which he persistedly avoided. Thus, there was default on the part of the defendant. It is not in dispute that in 17.10.92, both the parties i.e. the plaintiff and the defendants were present in the Court. In view of this, the Court was left with no option but to decide the suit forthwith. Thus, the Court on 17.10.92, rightly fixed the matter for pronouncement of the judgment on 22.10.92. Thus, in my view, the defendant was given more than sufficient opportunity to defend his case. To give further opportunity by way of adjournment, would mean, nothing but encouraging the dilatory tactics to delay the disposal of the suit. It is evident from the dates referred to above, that the defendant and his counsel were under the wrong impression that the courts are under obligation to adjourn case on their request and they can delay the disposal of the suit

as they like. The observations of the First Appellate Court has only given a message to the litigants and the Advocates that in the name of opportunity of hearing, they can delay disposal of the proceedings to whatever extent they like.

5. Before parting with, I disapprove the practice of the Judges making observations against the presiding Judge of the subordinate Court. It is unfortunate that the learned Judge of the First Appellate Court, without any material, has even gone to the extent of attributing ulterior motive to the Judge of the trial court. If the Appellate Judge had any suspicion in the matter, he could have dealt with the same separately on the administrative side. It was improper on his part to make any unwarranted observations against the learned Judge of the trial court. The Judges should refrain themselves from making any observations against a Judge in the judicial proceedings. The observations made by the first Appellate Judge against Mr D K Patel, Civil Judge (JD), Kapadvanj are expunged being without foundation and unwarranted.

6. In view of the aforesaid, this Revision Application is allowed and the judgment and decree passed by the Joint district Judge, Nadiad in Civil Appeal No.92/92 is quashed and set aside. The judgment and decree passed by the trial court in R.C.S. No.159/78 dated 22.10.92 is restored. Rule made absolute accordingly. No order as to costs.

...
msp